



Arkansas seeks leave to file *amicus curiae* brief because it has a great interest in the issue at hand. Specifically, Arkansas has interest in any ruling that will restrict the actions of its citizens and that will usurp a complex regulatory scheme implemented by its legislature and executive agencies. In response to Arkansas's request, Plaintiff argues that Arkansas should be denied the opportunity to file a brief because its stated interests are not relevant to its request for an injunction. This argument, however, is either a misinterpretation or mischaracterization of Arkansas's motion. While this Court may ultimately rule, after due consideration of argument on the issue, that Arkansas's stated interests may not be directly relevant to the legal issues underlying the request for an injunction, such interests are wholly relevant to the issue of whether Arkansas should be given the opportunity to weigh in on those issues.

For example, Plaintiff argues that Arkansas's concern about the economic impact an injunction will have on its State is irrelevant to Plaintiff's request for an injunction. While the Court may be called upon to resolve that issue, that is not the issue at this stage. The issue now is whether Arkansas has a sufficient interest that merits its participation in the underlying request for an injunction. Arkansas will file a brief addressing just that, if allowed. Right now, however, Arkansas is trying to reach that point by illustrating its interest based on the practical impact of an injunction.

Likewise, Plaintiff contends that Arkansas's concern for its regulatory program is irrelevant because a state program does not supersede an imminent and substantial endangerment claim under the Resource Conservation and Recovery Act ("RCRA"). While that argument may be worthy of the Court's consideration at some point, such an argument continues to ignore the current issue, which is Arkansas's interest. Arkansas is not arguing that its regulatory scheme preempts the RCRA claim. It is arguing that its lawyer should be given the opportunity to

participate in the discussion because the ultimate ruling may have a profound practical effect on that scheme. Indeed, if Plaintiff is correct in its interpretation of RCRA, Arkansas is going to be required to overhaul its solid waste disposal plan. [It bears repeating at this point that Plaintiff appears to be seeking relief from an entity, the State of Arkansas that it has failed to name as a party and whose intervention in this matter it has opposed.] Again, that is not necessarily a reason to deny the injunction, but it is an excellent reason why Arkansas should be heard.

Contrary to Plaintiff's assertion, Arkansas's brief will address legal issues relevant to the request for an injunction. Arkansas's motion specifically points out one legal issue it will address, if allowed, that goes to the heart of Plaintiff's request. That is, poultry litter is not a "solid waste" under RCRA. Accordingly, Plaintiff has no claim for an injunction, or anything else, pursuant to RCRA. Plaintiff makes no effort to argue against the relevance of this particular issue and, in fact, ignores it completely.

At this juncture, Arkansas is simply pointing out why it should be allowed to contribute to the substantive discussion. For Plaintiff to argue that those reasons are irrelevant to its RCRA claim totally misses the point. Those reasons should get Arkansas in the door and, once it is in, it will turn to the issues regarding RCRA and the injunction, one of which it has already identified.

Finally, Arkansas draws the Court's attention to Rule 29 of the Federal Rules of Appellate Procedure. Rule 29 allows a State to file *amicus curiae* brief without the consent of parties or leave of court. While that rule is not applicable to a proceeding in district court, and this Court has the discretion to deny Arkansas's request, Arkansas submits that it is persuasive. This rule reflects the policy that a state represents the interests of all of its citizens and the voice of those citizens should be heard when its representatives determine that its interests are at stake in a court of law. Indeed, Plaintiff represents the citizens of Oklahoma and, on behalf of those

citizens, is seeking to forbid activities by Arkansans inside their own border. The lawyer for the State of Arkansas should be given the chance to address that request.

For the foregoing reasons, the State of Arkansas prays that its motion for leave to file *amicus curiae* brief be granted.

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I certify that on the 31st of December 2007, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic filing to the following ECF registrants:

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